HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case.

W.P. No. 645 (SS) of 2002

Vinod Kumar Tyagi Vs Union of India & other

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date of Decision 13.7.2005

Initials of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 645 (S/S) OF 2002

Vinod Kumar Tyagi
Son of Sri Laxmi Sahai Tyagi,
R/o Village and Post Office Mukari,
Tehsil Bagpat, District Bagpat.

Versus

1. Union of India, through Defence Secretary, New Delhi.
2. Commanding Officer, Copy Cdr. No.1, Training Battalion, Bengal Engineer Group and Centre, Roorkee-247667.

.....Respondents.

Date: July 13, 2005

Sri M.S. Pal, learned counsel for the petitioner.
Sri Rakesh Thapliyal, learned counsel for the respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for issuance of a writ of mandamus directing the respondents to form a proper medical board and to re-examine the petitioner.

Briefly stated, the petitioner was selected for recruitment in the Army as a Soldier (GD) on 14.09.2001. Before his selection, the petitioner gave a written test, physical test and thereafter, he was medically examined. The petitioner served the Army from 14.09.2001 to 07.06.2002, thereafter, he was discharged from the service on account of invalidated Medical Board. On 21.06.2001, the petitioner was called by Lieutenant Colonal Anil Kumar regarding the fitness of the petitioner and he was declared medically fit, then the petitioner was called for training by the respondent no. 2 and the petitioner joined his service on 14.09.2001.

The petitioner has submitted that thereafter second medical examination was conducted by Lieutenant Colonal M. N.K. Shankar, who declared the petitioner unfit for the disability of soldier and knock-knee. The respondent no. 2 was thereafter discharged from the service vide order dated 08.06.2002. The contention of the petitioner is that the respondent no. 2 has no right to pass the said order against the petitioner as the medical reports are contradictory to each other and the opinion of the doctors of both Military Hospitals differ from each other.

The respondents have filed counter affidavit and admitted in paragraph 6 of the counter affidavit that the petitioner was sent for primary medical examination, in which he was declared permanently unfit for knock-knee and soldier movement deformity. Against the said opinion, the petitioner filed an appeal to the Military Hospital, Meerut where he was reviewed by Lieutenant Colonal Mr. M.K. Shankar, who was Classfied Specialist in Surgery. In the said review medical examination, he was decalred fit for the aforesaid two deformities. Thereafter, the petitioner was sent for second medical examination, which is a pre-condition for an incumbent to be sent for training, in which he was declared unfit.

I have heard the learned counsel fro the parties and have gone through the documents on the record. Rule 15 of Army Rules, 1954 provides as under:-

> *"[15-A. Release on medical grounds.-(1) An officer who is found by a Medical board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.*

(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the office is permanently unfit for any form of military service, issue a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service, every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:

Provided that where in the opinion of the Medical Board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition."

This is a case, in which there are two contradictory reports of the Doctors. The first medical examination of the petitioner was conducted ton 21.06.2001 by Dr. Anil Kumar and the petitioner was found fit for recruitment for the Army. The certificate issued to this effect is Annexure-2 to the Writ Petition.

However, the second medical examination was conducted by Lieutenant Colonal Mr. N.K. Shankar in which the petitioner was declared unfit due to Knock-knee. Thus evidently there is two conflicting medical opinion of the Doctors and as such the authorities concerned ought to have obtained the opinion of

Medical Board but instead of directing the petitioner to appear before the Medical Board and the authorities concerned discharged him from service. It will be in the interest of justice if the petitioner be got examined by a Medical Board for definite opinion regarding his physical fitness for military service.

Therefore, the respondents are directed to constitute a Medical Board and get the petitioner examined before the Medical Board.

Accordingly, the writ petition is allowed.

(Rajesh Tandon, J.)

Dated: July 13, 2005
Rathore